

# TERMS AND CONDITIONS OF TOTAL GLASS LIMITED

## 1. Definitions

- 1.1 "Company" shall mean Total Glass Limited its successors and assigns or any person acting on behalf of and with the authority of Total Glass Limited.
- 1.2 "Customer" shall mean the person or entity described as such in the Trading Application Form or otherwise on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and condition apply, and shall include any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Goods" shall mean goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Customer.
- 1.4 "Services" shall mean all services supplied by the Company to the customer including those described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Customer as well as any advice or recommendations given by the Company.
- 1.5 "Price" shall mean the cost of the Goods and/or Services as agreed between the Company and the Customer subject to Clause 6 of these terms and conditions.

## 2. Application of these terms and conditions to consumer

- 2.1 Where the Customer buys Goods as a consumer these terms and conditions (in particular clauses relating to Risk, Defects, Returns, Warranties, and Limitation of Liability) shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

## 3. Acceptance

- 3.1 Any instructions received by the Company from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 3.2 The Customer shall be responsible to the Company for ensuring accuracy and sufficiency of its order (including of any applicable specification and/or sample) and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform in accordance with this agreement.
- 3.3 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.4 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Company.
- 3.5 The Customer undertakes to give the Company at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.

## 4. Defects

- 4.1 The Customer shall inspect the Goods on delivery and shall within two (2) days notify the Company in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.  
For defective Goods, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods.
- 4.2 No Goods shall be accepted for return except in accordance with 4.1 above.

## 5. Delivery of Goods

- 5.1 Delivery of Goods shall take place:
  - (a) when the Customer takes possession of the Goods at the Company's address: or
  - (b) in the event that the Goods are delivered by the Company or the Company's nominated carrier, when the Customer takes possession of the Goods at the Customer's address or other address nominated by the Customer (delivery to have occurred immediately prior to the Goods being off-loaded from the delivery vehicle); or
  - (c) the Customer's nominated carrier takes possession of the Goods (delivery to have occurred immediately prior to the Goods being loaded onto the delivery vehicle) in which event the carrier shall be deemed to be the Customer's agent.
- 5.2 Unless otherwise agreed, the costs of delivery shall be payable by the Customer in addition to the Price in accordance with the provisions of Clause 6.
- 5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 5.4 In the event that the Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
- 5.5 In the event that the Customer is unable to take delivery of the Goods within fourteen (14) days of the notification by the Company that that Goods are ready the company may store the Goods (on it's own or any third party premises) and charge the Customer for it's reasonable costs of storage.
- 5.6 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.8 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
  - (a) such discrepancy in quantity shall not exceed 10%; and
  - (b) and the Price shall be adjusted pro rata to the discrepancy
- 5.9 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 5.10 Unless otherwise stated, time for delivery of the Goods shall not be of the essence. The Company shall not be liable for any loss, damage or other liability whatsoever, arising due to failure by the Company to deliver the Goods (or any of them) in accordance with its timescale for delivery (being an estimate only).

## 6. Price and Payment

- 6.1 At the Company's sole discretion the Price shall be either:
  - (a) the Company's then standard list price as indicated on invoices provided by the Company to the Customer in respect of Goods supplied; or
  - (b) the Company's quoted Price (subject to Clause 6.2) provided that the Customer shall accept the Company's quotation in writing within thirty (30) days.
- 6.2 The Company reserves the right to reissue and amend a quote at any time prior to notification by the Customer of its acceptance of the quote or in the event of a variation to the Goods and/or Services to be provided under the quote.
- 6.3 At the Company's sole discretion a deposit may be required.

- 6.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 6.5 Unless otherwise agreed (as described below), the due date for payment will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice. Alternatively, at the Company's sole discretion (and only if expressly notified to the Customer by the Company):
  - (a) payment shall be due on delivery of the Goods; or
  - (b) payment shall be due before delivery of the Goods; or
  - (c) payment for approved Customers shall be made by instalments in accordance with the Company's payment schedule; or
  - (d) Payment for approved Customer's shall be due thirty (30) days following the end of the month in which a statement is posted to the Customer's address for notices.
- 6.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by debit card, or by any other method as agreed to between the Customer and the Company. Any payment made by Credit Card shall incur an additional fee which shall represent 2.5% of the total invoice value.
- 6.7 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 7. Instructions to Customer

- 7.1 The Customer shall ensure that all materials and components are correctly assembled, installed, used and maintained in strict accordance with the Company's instructions or recommendations. In the event that the Customer orders any product without glazing and or locking mechanism and/or fails to supply details of the intended use and/or fails to comply with any of the provisions of this clause as a whole or any particular provision within this clause then no liability in relation to any loss or damage that thereafter may arise shall be borne by or attach to the Company. It shall at all times be the Customer's responsibility at all times to provide adequate details of the installation and usage of to seek and obtain the Company's instructions in relation thereto.
- 7.2 The Customer shall fully and effectively indemnify the Company in respect of any liability the Company may incur in relation to damage caused by faulty installation, work or parts damaged after supply to the Customer by the Company and whether the installation work has been carried out by the Customer or by any other person to whom the Customer has supplied the Goods.
- 7.3 If the Customer arranges installation by another person the Customer shall keep a record of the name, telephone number and address of the installer and end user.
- 7.4 Where the Customer supplies to a third party installer or end user any glass or other alternative materials, the Customer shall ensure that the glass or material supplied is subjected to adequate safety testing and quality controls. The Customer shall not supply a substitute to the glass as specified by the Company. Where the Customer wishes to supply what he considers to be a safer alternative to the glass specified by the Company he may only do so with written approval by the Company that the proposed alternative is suitable and falls within the stress loads for which the product has been tested.
- 7.5 The Customer shall use the Goods only for the purpose for which they are marketed by the Company.
- 7.6 The Customer must ensure that all assembly booklets, information leaflets and other literature supplied by the Company with the Goods are given to the installer and end user, as appropriate.
- 7.7 For the purposes of Section 6(8) of the Health and Safety at Work Act 1974 the Customer undertakes to comply with all instructions relating to the Goods received from the Company from time to time and to take other steps sufficient to ensure, so far as is reasonably practicable, that the Goods will at all times be safe and without risk to health when being properly used, set, cleaned and maintained by a person at work.

## 8. Title

- 8.1 It is the intention of the Company and agreed by the Customer that ownership of the Goods shall not pass until:
  - (a) the Customer has paid all amounts owing for the particular Goods; and
  - (b) the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.
- 8.1 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods shall continue.  
It is further agreed that:
  - (a) where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Customer are met; and
  - (b) until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
  - (c) the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - (d) if the Customer fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the goods are situated and take possession of the Goods; and
  - (e) the Customer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Company; and
  - (f) if the Customer shall not deal with the money of the Company in any way may be adverse to the Company; and
  - (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and
  - (h) the Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
  - (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Company will be the owner of the end products.

## 9. Risk

- 9.1 If the Company retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 9.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

9.3

## 10. Warranty

- 10.1 Subject to clauses 10.2 to 10.4, the Company warrants that the Goods shall be provided in accordance with the specification given by the Customer pursuant to clause 3.2.
- 10.2 The Company shall not be liable to the Customer for any breach of warranty in respect of any defect or damage which may be caused or partly caused by or arise through;
- (a) Failure on the part of the Customer to properly maintain any Goods; and
- (b) Failure on the part of the Customer to follow any instructions or guidelines provided by the Company; or
- (c) Any use of any Goods otherwise than for any application specified on a quote or order form; or
- (d) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (e) Fair wear and tear, any accident or act of God.
- 10.3 The Company shall in no circumstances be liable for any breach of warranty if the Goods are repaired, altered or overhauled without the Company's consent.
- 10.4 The Company shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim.
- 10.5 For Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. Whilst the Company shall honour such warranty the Company shall not be bound by nor responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 10.6 No warranty will apply to goods supplied by the company unless all agreed trading terms and condition have been fully adhered to.

## 11. Sale of Goods Act 1979 and Supply of Goods and Services Act 1982

- 11.1 This agreement is subject to the provisions of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 (or any replacement or re-enactment thereof) in all cases except where the Customer is contracting within the terms of the trade/business (which case all terms implied there under or otherwise are specifically excluded).
- 11.2 Notwithstanding clause 12.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions the Sale of Goods Act 1979 and the Supply of Goods and Services Act 182 or any laws or regulations governing the rights of consumers, except to the extent permitted by those Acts, laws or legislation.

## 12. Returns

- 12.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 8.1; and
- (b) the Company has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery dates; and
- (d) the Company will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instructions material in as new condition as is reasonably possible in the circumstances.
- 12.2 The Company will not accept the return of non- defective Goods for credit.

## 13. Intellectual Property

- 13.1 Where the Company has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings shall remain vested in the Company, and shall only be used by they Customer at the Company's discretion.
- 13.2 The Customer warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order.

## 14. Default and Consequences of Default

- 14.1 Interest on overdue invoices shall accrue from the date when payment becomes due on a daily basis until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 14.2 The Company may change interest on overdue invoices in accordance with the Late Payment of Commercial Debts (Interest) Act 1998,
- 14.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 14.4 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under the clause.
- 14.5 If any account remains overdue after thirty (30) days then an amount of £20.00 shall be levied as an administration fee and shall be levied for each month that the account remains overdue, which sums shall become immediately due and payable.
- 14.6 Without the prejudice to the Company's other remedies under these terms and conditions and at law, the Company shall under entitled to cancel all or any part of any order of the Customer which remains unperformed and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the events that:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## 15. Cancellation

- 15.1 The Company may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15.3 We will endeavour to make sure that all our Goods are in stock and are available to purchase, subject to availability but we do not accept any liability if a particular product is no longer available having been discontinued by the Manufacturer or our Suppliers. We will endeavour to keep all our customers informed if a particular product line is no longer available.

## 16. Data Protection Act 1998

- 16.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Company to:
- (a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's Credit worthiness or marketing products and services to the Customer; and

- (b) to disclose information about the Customer, whether collected by the Company from the Customer directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing a default by the Customer on publicly accessible credit reporting databases.
- 16.2 The Company may also use information about the Customer to monitor and analyse its business. In this context the Customer authorises the Company to disclose personal information to agents or third parties engaged by the Company for this purpose.
- 16.3 The Customer consents to the transfer of information outside of the European Economic Area for the purposes listed above.
- 16.4 Where the Customer is an individual the authorities under (clause 16.1) are authorities or consents for the purposes of the Data Protection Act 1998.
- 16.5 The Customer shall have the right to request the Company for a copy of the information about the Customer retained by the Company and the right to request the Company to correct any incorrect information about the Customer held by the Company.

## 17. Limitation of Liability

- 17.1 Nothing in these terms and conditions excludes or limits the liability of either the Customer or the Company for (i) death or personal injury caused by the persons negligence; or (ii) fraud or fraudulent misrepresentation; or (iii) any other liability that cannot be legally excluded or limited.
- 17.2 Subject to clause 17.1, the Company shall not be liable whether in contract (whether by way of guarantee, warranty, indemnity or otherwise), tort (including negligence) misrepresentation, breach of statutory duty or otherwise, and whether cause directly or indirectly, for any (i) loss of profits; (ii) loss of reputation or goodwill; (iii) loss of business; or (iv) consequential loss or damage of any kind, however caused which arises out of or in connection with this contract.
- 17.3 Subject to clause 17.1 and without prejudice to clause 17.2, in the event the Company is liable, either directly or indirectly, to the Customer in respect of any claim, the Company's aggregate liability shall not exceed the value of the Price.

## 18. Representations

The Customer hereby disclaims and waives any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any representation made to the Customer by the Company, unless expressly stated under this contract, and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgement. For the avoidance of doubt, nothing in this contract is intended to limit of exclude either party's liability for fraud or fraudulent misrepresentation.

## 19. General

- 19.1 If any provision of these terms and condition shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 All descriptive and technical specifications, drawings, catalogues, illustrations and particulars of weight and dimensions supplied by the Company are approximate only and the Company reserves the right without notice to the Customer to make alterations thereto and to supply the Goods so altered in performance of the Contract provided that such alterations do not materially affect the characteristics of the Goods.
- 19.3 These terms and conditions any contract to which they apply shall be construed and governed in accordance with the laws of England and Wales, and the parties consent to the exclusive jurisdiction of the English courts.
- 19.4 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Company.
- 19.5 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 19.6 The Company reserves the right to review these terms and conditions at any time. If, following such a review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change. Except where the Company supplies further Goods to the Customer and the Customer accepts such Goods, the Customer shall be under no obligation to accept such changes.
- 19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, Flood, drought, storm or other event beyond the reasonable control of either party.